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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Commonwealth of Pennsylvania vs. Coleman K. Smith, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Criminal Action - No. 664-2015

HEADNOTES

Probable Cause; Driving Under the Influence

1. “Officer has probable cause to make a warrantless arrest when the facts and circumstances within the police officer’s knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested.” *Commonwealth v. Simmen*, 58 A.3d 811, 817 (Pa. Super. 2012).

2. It is “well settled that reasonable grounds to arrest does not require the failure of field sobriety tests.” *Commonwealth v. Slonaker*, 795 A.2d 397, 402 (Pa.Super. 2002).

3. Trooper’s testimony that the Defendant crossed over center line twice for a sustained period of time while driving, that he had bloodshot eyes, slurred speech and smelled of alcohol was sufficient to establish probable cause for his arrest on suspicion of driving under the influence despite the trooper improperly conducting a field sobriety test.

Appearances:

F. Dean Morgan Esq., *Counsel for Defendant*

Gerard N. Mangieri, Esq., *Assistant District Attorney*

OPINION sur PA. R.A.P. 1925(a) AND ORDER OF COURT

Before Van Horn, P.J.

STATEMENT OF THE CASE

On December 7, 2015, the above-captioned Defendant, Coleman K. Smith was convicted of one count of DUI in violation of 75 Pa. C.S. 3802(b) and one count of DUI in violation of 75 Pa. C.S. 3802(a)(1) following a suppression hearing and a non-jury trial. Defendant was sentenced on January 6, 2016, to 30 days to 6 months incarceration at the Franklin County Jail. Defendant filed a Notice of Appeal on January 26, 2016, and his Concise Statement of Matters Complained of on Appeal on February 16, 2016. The Court will now respond to Defendant’s claim of error in this Opinion and Order of Court pursuant to Pa.R.A.P. 1925(a).

ISSUES RAISED

Defendant raises a sole issue in his Concise Statement:¹

1. Did the Suppression Court error in denying Appellant's Motion to Suppress Evidence when the arresting officer failed to administer and correctly score the Horizontal Gaze Nystagmus standard field sobriety test, falsified his police report, provided false testimony in direct and cross-examination and acknowledged he did not know how to administer the field sobriety test?

DISCUSSION

In his sole issue, Defendant asserts that Trooper Hanko failed to properly administer field sobriety tests, particularly the Horizontal Gaze Nystagmus (HGN) test. Specifically, Defendant highlights that Trooper Hanko made just two passes with the stimulus instead of the eight that are required according to the National Highway Traffic Safety 2013 Student Manual. As a result, Defendant concludes that Trooper Hanko did not have sufficient probable cause to believe the Defendant was operating a motor vehicle after consuming alcohol such that he was rendered incapable of safely driving. Incredibly, Defendant asserts that “. . . to establish sufficient probable cause to believe the Defendant was under the influence of alcohol or a controlled substance, the officer **must properly conduct Field Sobriety Tests**, including HGN.” (emphasis added). Def.'s Concise Statement at 2.

It is an apodictic rule that “[a]n officer has probable cause to make a warrantless arrest ‘when the facts and circumstances within the police officer’s knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested.’” *Commonwealth v. Simmen*, 58 A.3d 811, 817 (Pa. Super. 2012) citing *Commonwealth v. Dommel*, 885 A.2d 998, 1002 (Pa. Super. 2005). In making a probable cause determination a court must look to the totality of the circumstances. *Commonwealth v. Stroud*, 699 A.2d 1305, 1308 (Pa. Super. 1997).

Despite Defendant's contention to the contrary, it is unmistakably clear that reasonable grounds to arrest on suspicion of DUI does not require the failure of field sobriety test. *Commonwealth v. Slonaker*, 795 A.2d 397, 402 (Pa. Super. 2002). Instead, “[i]t is the facts and circumstances within the personal knowledge of the police officer that frames the determination of

¹ Concise Statement of Errors Complained of on Appeal, 2/16/16.

the existence of probable cause.” *Commonwealth v. Salter*, 121 A.3d 987, 997 (Pa. Super. 2015). In *Slonaker*, the defendant argued that because his two failed field sobriety tests had been suppressed, there was insufficient indicia of intoxication present to arrest him for driving under the influence. The *Slonaker* Court rejected this contention, stating “[i]n the case at bar, Appellant drove erratically for an extended period of time, smelled of alcohol, and had bloodshot, glassy eyes. We find that Trooper Marasco had probable cause to suspect Appellant of driving under the influence. . .” *Id.* at 402.

In the instant matter, this Court relied on essentially the same facts the court used in *Slonaker* in finding that probable cause existed. Specifically, at the suppression hearing and non-jury trial this Court stated:

The Court: Clearly the determination the Court must make is whether the Trooper did have sufficient probable cause at the point he made the arrest. With the evidence that has been presented, this Court does find sufficient probable cause.

The fact that the Trooper’s testimony regarding the HGN testing was inaccurate is one matter for this Court to consider. And I can throw that part out. I believe the rest of the testimony presented by the Trooper as supported by the MVR that was provided as well.

All of the other indicia including crossing the center line twice for a sustained period of time, the odor of alcohol, glassy eyes, slurred speech, and the admission to drinking, fumbling with cards, inability to produce records all give sufficient basis as the totality of the circumstances test for finding probable cause.

The Defendant was unable for various reasons to perform field sobriety tests. **But that does not prevent this Court from finding the Trooper possessed sufficient probable cause.**

(emphasis added). N.T. 12/7/15 at 48-49. The facts indicated by this Court on the record, particularly that the Defendant crossed the center line twice, that he had glassy eyes, slurred speech and admitted to drinking, were established by both Trooper Hanko’s testimony and review of the MVR. Consequently, this Court has little trouble concluding that the facts and circumstances within Trooper Hanko’s personal knowledge were sufficient to demonstrate the existence of probable cause in this case. The Defendant’s claim is without merit.

CONCLUSION

For all of the aforementioned reasons, this Court finds that there was sufficient probable cause to arrest the Defendant in this matter. As such, this Court respectfully requests that the Superior Court dismiss the appeal of the Defendant.

ORDER OF COURT

AND NOW THIS 5th DAY OF April, 2016, pursuant to Pa. R.A.P. 1931(c),

IT IS HEREBY ORDERED THAT the Clerk of Courts of Franklin County shall promptly transmit to the Prothonotary of the Supreme Court the record in this matter along with the attached Opinion sur Pa. R.A.P. 1925(a).

Pursuant to Pa. R. Crim. P. 114, the Clerk of Courts shall immediately docket this Opinion and Order of Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Opinion and Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.